Filed 6/12/07 In re Claudio Z. CA2/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re CLAUDIO Z., et al., Persons Coming Under the Juvenile Court Law.	B194092 (Los Angeles County Super. Ct. No. CK61886)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. CLAUDIO Z., et al., Defendants and Appellants.	

APPEAL from an order of the Superior Court of Los Angeles County, D. Zeke Zeidler, Judge. Appeal dismissed.

Leslie A. Barry, under appointment by the Court of Appeal, for Appellant.

Raymond G. Fortner, Jr., County Counsel, Kim Nemoy, Deputy County Counsel; Patrick D. Goodman for Respondent.

The parents of two minors adjudicated dependents of the juvenile court appeal from orders entered after a six-month review hearing, in which the juvenile court denied the father's request to place the children in his home, found that reasonable reunification services had been provided and ordered that reunification services continue. For the reasons stated below, we dismiss the appeals.

BACKGROUND

On December 15, 2005, DCFS detained six-year old Claudio Z. and his infant brother Anthony Z. after Anthony was treated at Long Beach Memorial Hospital for symptoms consistent with shaken-baby syndrome. The childrens' mother (mother) subsequently confessed to shaking Anthony and pleaded no contest to criminal charges of child abuse. (Pen. Code, § 273a, subd. (a).) DCFS filed a petition and a first amended petition regarding both children pursuant to Welfare and Institutions Code section 300,[1] alleging, in essence, that the mother had abused Anthony; that the children's father (father) had known or reasonably should have known of the abuse and failed to protect Anthony; and that both parents had failed to provide Anthony with timely or appropriate medical care.

On April 11, 2006, the juvenile court found the allegations in the petition to be true, declared the children dependents of the court, and ordered DCFS to provide reunification services to father only. At the six-month review hearing on September 27 and 29, 2005, father requested that the children be placed in his home. Although the juvenile court found that father was in compliance with his case plan, it denied his request for a home-of-the-father order because father refused to believe that mother posed a risk to the children. The juvenile court further found that DCFS had provided reasonable reunification services, and ordered reunification services to continue for

[1] All statutory references are to the Welfare and Institutions Code unless stated otherwise.

another six months. Both parents appealed the juvenile court's orders at the six-month review hearing.[2]

On April 19, 2007, while this appeal was pending, the juvenile court entered a minute order placing Claudio and Anthony in their parents' home, under the supervision of DCFS.[3] The juvenile court found that both parents were in compliance with the case plan, ordered a permanent plan "of return to home of Parents," and stated that "THE GOAL IS TO TERMINATE JURISDICTION." The juvenile court further ordered DCFS to provide family maintenance services. Based on the April 19 minute order, DCFS has moved to dismiss the parents' appeals as moot, arguing that "there is no further relief this Court can grant."

DISCUSSION

On appeal, father does "not directly challeng[e] the denial of placement in his home." Rather, "Father contends DCFS did not offer or provide him with reasonable [reunification] services because DCFS failed to follow orders made by the juvenile court, failed to maintain contact with services providers, and took no action to assist Father in addressing the problems that brought him and his children before the juvenile court." DCFS contends father forfeited his contention by not raising it with the juvenile court.

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[2] Mother's appointed appellate counsel notified us pursuant to *In re Sade C.* (1996) 13 Cal.4th 952, 978-983, that she was unable to find any arguable contentions. We notified the mother that she had 30 days to submit in writing any contentions or arguments she desired us to consider. The mother has not responded. We have examined the entire record. We are satisfied that appellate counsel fully complied with her responsibilities and no arguable issues exist. (*Id.* at p. 959.) When no contentions are raised on a dependency appeal, the correct course of action is to dismiss the appeal. (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 196; *In re Sade C., supra,* 13 Cal.4th at p. 994.)

[3] We grant the request of DCFS to take judicial notice of the juvenile court's April 19, 2007 minute order, pursuant to Evidence Code sections 452, subdivision (d) and 459.

We not consider the issue of forfeiture, however, because father's contention is not cognizable on appeal.

In *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147 (*Melinda K.*), the mother of a dependent minor appealed the juvenile court's "'finding that . . . D.C.F.S. has provided Mother and Minor with reasonable family reunification services since Dispositional orders were entered by the court . . . .'" (*Id.* at p. 1152.) DCFS moved to dismiss the appeal "on the ground that the court's finding that reasonable reunification services had been provided is not directly appealable." (*Ibid.*) The court of appeal agreed. "[S]ection 395, which authorizes an appeal from an 'order' after judgment, does not authorize an appeal from the isolated finding in this case that reasonable reunification services had been provided." (*Id.* at p. 1153.) The court reasoned that "[w]hen the juvenile court makes a finding that reasonable services were provided, a parent or legal guardian may not be immediately impacted by that finding. Here, for example, mother was not aggrieved by the finding that reasonable reunification services were provided, given that services were continued for at least another six months and no negative consequence flowed from the reasonable services finding. . . . Accordingly, we conclude that there is no right to appeal a finding that reasonable reunification services were provided to the parent or legal guardian unless the court takes adverse action based on that finding, because, in the absence of such action, there is no appealable order resulting from that finding." (*Id.* at pp. 1153-1154.)

As father in this case, the mother in *Melinda K., supra,* 116 Cal.App.4th 1147, 1154, did not "challenge the nature or adequacy of the reunification services ordered. Nor [did] she challenge the juvenile court's order to continue such services." She did not challenge "the court's order that her daughter not be returned to her based on its finding that doing so would be detrimental to the child's safety, protection, physical or emotional well-being. Mother [did] not contest the court's finding of detriment, nor [did] she contend that her daughter should have been returned to her at the six-month review hearing." (*Ibid.*) "The court made no finding of detriment based on mother's participation or lack of participation in court-ordered services. To the contrary, the court

found that mother was in compliance with the case plan . . . ." (*Id.* at p. 1156.) As in *Melinda K.*, therefore, father's claim of error is not cognizable on direct appeal.[4]

Father attempts to distinguish *Melinda K., supra,* 116 Cal.App.4th 1147, arguing that, in the juvenile court, "Father contested the issue of whether or not there was detriment in returning the children to his home and did not acquiesce in the provision of additional services." On appeal, however, father contests neither the juvenile court's finding of detriment nor the juvenile court's order providing further reunification services. As he expressly states in his brief, "Father is not directly challenging the denial of placement in his home, but instead challenges the reasonable services finding made at the hearing on September 29, 2006." The sole relief that he requests in both his opening and reply briefs is that "this court reverse the finding the juvenile court made at the six month review hearing that DCFS had provided reasonable reunification services to [the father]."

Father also argues that the finding is appealable in this case because the juvenile court took "adverse action" based on that finding when it denied his request for a home-of-the-father order. The juvenile court denied the home-of-the-father order because it found "a substantial risk of detriment to [the children's] physical and or [*sic*] mental health" because "[t]he father still does not believe that the mother poses a risk that there is any need for him to be protecting children from her." Father argues that DCFS unreasonably failed to give his therapist complete information and adequately to supervise his therapist's performance; had DCFS done so, father could have made better progress toward "acknowledg[ing] the possibility the Mother did cause Anthony's injuries."

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[4] The court in *Melinda K., supra,* 116 Cal.App.4th 1147, 1156-1157, held that the finding that DCFS had provided reasonable services was reviewable on a writ of mandate because such findings might have an adverse effect in future proceedings. The court exercised its discretion to treat the appeal as a writ petition.

Father's argument lacks merit. Father does not challenge the juvenile court's finding of detriment. Father does not explain how, had the juvenile court found that DCFS acted unreasonably, such a finding would have changed the juvenile court's placement order. Even if we accept father's contention that DCFS somehow caused his failure to acknowledge mother's abuse of Anthony, father *still* would have received the allegedly inadequate counseling prior to the six-month review hearing, and the juvenile court still would have denied the placement order father requested. As in *Melinda K., supra,* 116 Cal.App.4th 1147, father here did not suffer adverse consequences as a result of the juvenile court's finding that DCFS provided reasonable reunification services. Accordingly, "we conclude that there is no right to appeal a finding that reasonable reunification services were provided to the parent . . . unless the court takes adverse action based on that finding . . . ." (*Id.* at p. 1154.)

Even if the juvenile court's finding were appealable, the juvenile court's April 19, 2007 order returning Claudio and Anthony to his parents and setting a permanent plan of family reunification rendered father's appeal moot. "When no effective relief can be granted, an appeal is moot and will be dismissed. [Citation.] "'[T]he duty of this court . . . is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" [Citation.] . . . [W]hen, pending an appeal from the judgment of a lower court, and without any fault of the [respondent], an event occurs which renders it impossible for this court, if it should decide the case in favor of [appellant], to grant him [or her] any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. [Citations.]"' [Citation.]" (*In re Jessica K.* (2000) 79 Cal.App.4th 1313, 1315-1316 [quoting *Eye Dog Foundation v. State Board of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541]; accord, *In re Albert G.* (2003) 113 Cal.App.4th 132, 134-135.)

"The remedy for a failure to provide reasonable reunification services is an order for the continued provision of services, even beyond the 18-month review hearing. (*In re*

Daniel G. (1994) 25 Cal.App.4th 1205, 1211-1215 [31 Cal.Rptr.2d 75].) The remedy is not to return the child to the parent in spite of a finding of a substantial risk of detriment to his emotional well-being. [Citation.]" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 975.) Because reunification services were sufficient during the pendency of this appeal to result in the return of the children to their parents, that remedy is no longer available. Accordingly, the appeal is moot.

DISPOSITION

The appeal is dismissed.

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MOSK, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.